



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Department of Agriculture  
Austin, Texas

Gentlemen: Attention of Charles E. Baughman

Opinion No. 0-1911

Re: May the Department of Agriculture use the fees collected by virtue of Article 5695, Vernon's Civil Annotated Statutes and other statutes mentioned in the special rider placed at the end of the Appropriation Bill for the Agriculture Department to pay transportation expenses of weight and measures equipment and other necessary expenses as mentioned herein?

Your request for an opinion of this department on the above stated question has been received.

We quote from your letter as follows:

"In the administration of Article 5695 R. C. S. 1925 and Chapter 287 Acts of the Regular Session 42nd Legislature, the Commissioner of Agriculture is charged with the responsibility of carefully and accurately testing all scales, weights, beams and measures used by public weighers, deputy public weighers and licensed milk and cream testers. This responsibility being in addition to certain other inspections and investigations necessary to the enforcement of said acts.

"The fee of \$5.00 collected from public weighers and deputy public weighers is to pay for the inspection and test of said scales, weights and measures and the fee must be collected by the Commissioner before the required Certificate of Authority is delivered to the public weigher or deputy public weigher;

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therefore, the inspection and test of the scales, weights and measures must come first, then the collection of the fee and later the issuance of the required Certificate of Authority, which must be obtained by all public weighers and deputy public weighers in this State; likewise a complete examination and test of the equipment used by licensed milk and cream testers must be made during the course of the investigation.

"In order to make the above mentioned tests, heavy test weights and cumbersome equipment is essential; in fact, a large number of 50 pound, 500 pound and 2500 pound test weights are employed in tests, making the use of two large 3-1/2 ton trucks and several cars and trailers, necessary for the transportation of these heavy test weights and equipment; also the two large trucks are equipped with individual power plants, driven by gasoline motors, which furnish the power for unloading and loading the weights and moving them about on the platform of the scale. The transportation, maintenance and care of this equipment is absolutely necessary in the performance of these duties, otherwise it would be impossible for a person to comply with the law. Naturally, there is an expense incurred in the transportation, maintenance and care of this equipment; such as, gasoline, oil, truck, trailer and car repairs, parts and repairs to the testing equipment proper, and rooms and meals for the drivers of this equipment.

"The completed appropriation bill does not provide a specific item for defraying this necessary expense, and the only provision in the bill for its payment is in the special rider placed at the end of the appropriation for this Department, which makes a lump sum appropriation of all fees collected

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by virtue of the above mentioned Acts, for the enforcement of same. Therefore you will please advise if the Department of Agriculture, in meeting the responsibilities imposed upon the Commissioner by the provisions of Article 5695 R. C. S. 1925 and Chapter 287 Acts of the 42nd Legislature, has the Authority to use a portion of the lump sum appropriation, made in the special rider of the appropriation bill, to meet the above mentioned and similar necessary expenses."

In the appropriation made by the Legislature in Senate Bill No. 427, Acts Regular Session, 46th Legislature, for the Agricultural Department under the general heading "Weights and Measures Division" appears the following:

"36. Chief of Division.....	2,700.00	2,700.00
37. Inspector of weights and measures..	1,800.00	1,800.00
38. Inspector of weights and measures..	1,800.00	1,800.00
39. Inspector of weights and measures..	1,800.00	1,800.00
40. Inspector of weights and measures..	1,800.00	1,800.00
41. Inspector of weights and measures..	1,800.00	1,800.00
42. Inspector of weights and measures..	1,800.00	1,800.00
43. Inspector of weights and measures..	1,800.00	1,800.00
44. Inspector of weights and measures..	1,800.00	1,800.00
45. Inspector of weights and measures..	1,800.00	1,800.00
46. Inspector of weights and measures..	1,800.00	1,800.00
47. Inspector for testing butter fat		
in milk and cream.....	1,800.00	1,800.00
48. Inspector for testing butter fat		
in milk and cream.....	1,800.00	1,800.00
49. Inspector for testing butter fat		
in milk and cream.....	1,800.00	1,800.00
50. Salaries and other expenses in the		
weights and measures fee fund,		
Article 5695, Revised Civil Sta-		
tutes, 1925, Chap. 287, Regular		
Session Forty-second Legislature.		
50a. Rent, heat, light, postage, tele-		
phone, telegraph, printing sup-		
plies and Contingent.....	1,500.00	1,500.00
50b. Bookkeeper and office deputy.....	1,500.00	1,500.00
50c. Traveling expenses.....	3,000.00	3,000.00"

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(The Governor vetoed Items 50b and 50c)

The special rider appended to the Appropriation for the Department of Agriculture reads in part as follows:

"For each of the fiscal years ending August 31, 1940 and August 31, 1941, all fees and/or unexpended balances which have been received and which may be received by virtue of Chapter 7, Article 153, Revised Civil Statutes, 1925; Chapter 3 of Title 4, Revised Civil Statutes, 1925; Article 5764, Revised Civil Statutes, 1925; Article 5695, Revised Civil Statutes, 1925; Chapter 287, Regular Session, Forty-second Legislature; Chapter 304, Regular Session Forty-first Legislature and House Bill No. 12, First Called Session, Forty-fifth Legislature and any amendments to any of said acts are hereby appropriated, after they shall have been deposited in the State Treasury, to the Department of Agriculture to be used by said Department for the enforcement of the above-mentioned Acts and for the operation and maintenance of said activities as hereinabove specifically itemized and in no event shall any of these fees be used otherwise."

The answer to your question is controlled by what we have already said to you concerning similar appropriations and vetoes of the Governor, in our opinions Nos. 0-954 and 0-1687.

We quote from our opinion No. 0-1687, above referred to as follows:

"The special rider quoted in your letter, also quoted above, does not purport to make these fees available to the Department of Agriculture generally to be used for the enforcement of the Acts under which they are collected and for the operation and maintenance of such activities, but appropriates said fees restrictively,

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with the limitation that they may be used by the Department of Agriculture for the operation and maintenance of said activities and the enforcement of the Acts under which they are collected 'as hereinabove specifically itemized and in no event shall any of these fees be used otherwise.' It follows that these fees are not available to the Department generally, but are available only to defray the items of expenses to which they are appropriated as specifically itemized in the Act as it appeared when it became the law of the State of Texas, which was not until it had been approved by the Governor. The Governor's veto of such specific items indicated above was fully effective to eliminate these items from the appropriation bill, and therefore to limit the authority to expend these funds accordingly."

It follows from what we have said above that your question must be answered in the negative.

Trusting that the foregoing fully answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

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APPROVED FEB 12, 1940

*Gerard H. Mann*  
ATTORNEY GENERAL OF TEXAS

